A **JEGATHEES NAGULAN & ORS v. SURESH BALAKRISHNAN & ANOR**

HIGH COURT MALAYA, SEREMBAN
KAMALUDIN MD SAID J
[CIVIL APPEAL NO: 12(B)-60-16-04-2015]
B 25 APRIL 2016

CIVIL PROCEDURE: *Stay – Stay of execution of judgment – Application for stay pending appeal – Whether special circumstances established – Whether difficulty in recovery of money constituted special circumstance – Whether consequential order subsequent to judgment operated as stay of execution*

C

CIVIL PROCEDURE: *Judgments and orders – Order of court – Section 11 of Public Trust Corporation Act 1995 – Power of appointment of trustee, executor, administrator, guardian, next friend, agent, attorney, receiver and manager or liquidator – Whether only High Court has power to make order – Whether Sessions Court overstepped jurisdiction in granting order – Whether order by Sessions Court a nullity*

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This was an appeal by the appellants ('plaintiffs') against the order of the Sessions Court dated 2 April 2015 ('order of 2 April 2015') that the judgment sum for nursing care be paid in the name of the second plaintiff and administered by Amanah Raya Berhad ('ARB') for the second plaintiff at Columbia Asia Extended Hospital. The order of 2 April 2015 was given for prayer 3 *vide* the respondents' ('defendants') encl. 76A, which was the defendants' application for the stay of execution of the judgment dated 19 March 2015 pending the defendants' appeal. The order was subsequently amended on 6 October 2015. The defendants contended that the order of 2 April 2015 was essentially a consequential order made subsequent to the judgment dated 19 March 2015 and merely clarified the manner in which the judgment sum was to be paid. The defendants further contended that the order should be read together with the judgment as a single decision and therefore, the appeal was not competent in law as the order was not an order which stands alone. The defendants also alleged that the order was amended under the slip rule and accordingly, it no longer existed as it had been taken by events. The plaintiffs submitted on the issue of non-existence of special circumstances in the application for stay of execution in encl. 76A and that only the High Court has the power to make the order under s. 11 of the Public Trust Corporation Act 1995 ('the Act') and not the Sessions Court. Therefore, the issue for determination was whether the order of the Sessions Judge was lawful or a nullity.

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Held (setting aside orders of the Sessions Court with costs):

I

(1) The court was *functus officio* after the judgment delivered on 19 March 2015. The order of 2 April 2015 was made upon the application of the defendants and was a separate application made under O. 92 r. 4 of the

Rules of Court 2012 ('ROC') and/or the inherent jurisdiction of the court. The order was an order which could stand alone. Although the order was subsequently amended, the amendment did not violate the order of 2 April 2015. The order could be clearly understood to refer to prayer 3 of encl. 76A which was also mentioned in the body of the order. Therefore, the order appealed against still existed. (para 10)

(2) There is no proposition of law that pending an appeal, a defendant is permitted to refuse to pay a plaintiff, monies under the judgment sum by reason of the failure of the plaintiff to prove its solvency. The difficulty in the recovery of the amount of money was not a special circumstance to justify a stay of execution on the nugatory principle. By granting the application for stay, more hardship and injustice would be caused to the plaintiff. The Sessions Court had granted a clear order that the costs of nursing care to be paid in the name of the second plaintiff at Columbia Asia Extended Hospital. No order was granted for the stay of execution pending the defendants' appeal and therefore, the issue of whether there were special circumstances for the defendants to prove in their application for stay did not arise. (paras 17, 28 & 30)

(3) At the time encl. 76A was heard, there must be a letter of consent obtained by the defendants that ARB was able to pay to Columbia Asia Extended Hospital. The letter of consent should have been obtained and tendered in by way of affidavit evidence by the company. However, there was no such evidence or even the slightest indication that ARB were prepared to take on the task. There was also no letter from ARB that they undertook, once the monies were deposited in their bank account, that they would pay the monthly bills to Columbia Asia Extended Hospital. In the circumstances, the Sessions Judge had absolutely no right in law to direct the monies to be paid to ARB. Hence, the granting of order in prayer 3 of encl. 76A was unlawful and must be set aside. (paras 35 & 37)

(4) The Sessions Judge also did not consider that ARB charged 1% to 2% interest of the total deposit as their fees. The interest paid was negligible compared to a commercial bank interest. There being no difference between ARB and other registered companies or other financial institution such as commercial banks, the money could be deposited into the commercial banks. Further, if for any reason the plaintiff could not be admitted in Columbia Asia Extended Hospital, the plaintiff was entitled to use the money, not only for hiring qualified nurses but also to spend the money on his food, clothing, pampers, medications etc. which would exclude the costs at the hospital. Therefore, there was no reason to allow the defendants to deprive the plaintiffs of the money. (paras 36 & 38)

(5) Pursuant to s. 11 of the Act, the power of appointment of trustee, executor, administrator, guardian, next friend, agent, attorney, receiver and manager or liquidator was only given to the High Court. The appointment of ARB as the administrator should have been made by the High Court. In the circumstances, the Sessions Court had overstepped its jurisdiction. Further, under O. 76 r. 12 of the ROC, the court may give general or special directions as to how the money was to be applied or dealt with by the court where the money was paid to, or for the benefit of a person under disability. However, as the Sessions Judge had no general inherent jurisdiction to grant the order it did beyond jurisdiction given by a particular statute, the order of 2 April 2015 and the amended order of 6 October 2015 was set aside. (paras 41, 43, 45, 47, 50 & 52)

Case(s) referred to:

Asean Security Paper Mills Sdn Bhd lwn. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 2 CLJ 349 FC ***(refd)***

Ban Lee Sdn Bhd v. Renganathan Narayanan [1998] 3 CLJ Supp 425 HC ***(refd)***

Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd [2002] 3 CLJ 380 CA ***(refd)***

TAC Construction & Trading v. Bennes Engeneering Bhd (No. 2) [1999] 2 CLJ 518 HC ***(refd)***

Wong Uong Kee v. RHB Insurance Bhd [2009] 9 CLJ 859 HC ***(refd)***

Legislation referred to:

Public Trust Corporation Act 1995, ss. 2, 11

Rules of Court 2012, O. 12 r. 2, O. 76 rr. 1, 12, O. 92 r. 4

For the appellants - Brijnandan Singh Bhar, Sumithi Chandra & Natasha Bhar; M/s T Rajagopalu & Co

For the respondents - Arun Abraham & Roy Sreenivasan; M/s Lachaman Lalchand & Assocs

[Editor's note: Appeal from Sessions Court; Summons No: 53-206-02-2013]

Reported by S Barathi

JUDGMENT

Kamaludin Md Said J:

Introduction

[1] The appellants/plaintiffs being not satisfied with the order of the Sessions Court dated 2 April 2015, appeal against the said order.

[2] The respondents/defendants filed a notice of application (encl. 76A) which sought the following orders:

(i) penggantungan perlaksanaan diberi terhadap penghakiman Mahkamah Yang Mulia dalam ini bertarikh 19 Mac 2015 sambil menunggu keputusan muktamad rayuan defendan kepada Mahkamah Tinggi;

(ii) dalam alternatif, jumlah penghakiman Yang Mulia dalam ini bertarikh 19 Mac 2015 diletakkan dalam akaun pelanggan peguam cara plaintif-plaintif sambil menunggu keputusan muktamad rayuan defendan-defendan kepada Mahkamah Tinggi; dan

(iii) lagi atau dalam alternatif, jumlah penghakiman yang dibenarkan oleh Mahkamah Yang Mulia ini untuk kos penjagaan diletakkan atas nama plaintif kedua dan ditadbir oleh Amanah Raya Berhad untuk penjagaan di Columbia Asia Extended Care Hospital.

[3] Upon hearing both parties, the Sessions Court made an order dated 2 April 2015 ("order") that the judgment sum for nursing care be paid in the name of the second plaintiff and administered by Amanah Raya Berhad for the second plaintiff at Columbia Asia Extended Hospital.

[4] Hence, the order was given solely for the third prayer sought by the defendants in encl. 76A. In this case the judgment sum for nursing care is RM1,863,056 awarded against the defendants by the Sessions Court.

[5] The order dated 2 April 2015 appealed against reads as follows:

> ATAS permohonan Defendan-defendan DAN SETELAH MEMBACA Notis Permohonan di lampiran 76A, Afidavit Lachman Lalchand yang diikrarkan pada 25hb Mac dan Afidavit Sumathi Chandra yang diikrarkan pada 30hb Mac DAN SETELAH MENDENGAR Dato Brijnandan Singh Bhar dan Cik Sumathi Chandra bagi pihak Plaintif-Plaintif dan Encik Aaron Abraham dan Encik K. Ganesan bagi pihak Defendan-Defendan.
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> MAKA ADALAH PADA HARI INI DIPERINTAHKAN bahawa penghakiman bertarikh 19hb Mac 2015 untuk penjagaan iaitu "nursing care" dibayar atas nama Plaintif Kedua dan ditadbir oleh Amanah Raya Berhad untuk kos penjagaan Plaintif Kedua di Columbia Asia Extended Care Hospital. Kos ditanggung oleh Defendan-Defendan.

[6] This order was subsequently amended at second paragraph on 6 October 2015 to now reads as follows:

> MAKA ADALAH PADA HARI INI DIPERINTAHKAN bahawa Permohonan Defendan-Defendan di Lampiran 76A dibenarkan di prayer alternatif 3 bahawa penghakiman bertarikh 19hb Mac 2015 untuk penjagaan iaitu "nursing care" dibayar atas nama Plaintif Kedua dan ditadbir oleh Amanah Raya Berhad untuk kos penjagaan Plaintif Kedua di Columbia Asia Extended Care Hospital. Kos ditanggung oleh Defendan-Defendan.

[7] The amended order dated 2 April 2015 can be found in Rekod Rayuan Tambahan Plaintiff (II).

Preliminary Issue

[8] It was contended by the defendants that the order dated 2 April 2015 by the Sessions Court was *inter partes* order having been decided after hearing both parties. It was essentially a consequential order made subsequent to the

judgment and merely clarified the manner in which the judgment sum was to be paid. It should therefore be read together with the judgment dated 19 March 2015 as a single decision. As such, it is submitted that this appeal is not competent at law as the order is not an order which stands alone. Furthermore, by enclosure, the appellants/plaintiffs have amended the order under the slip rule. Accordingly, the order appealed against in this appeal no longer exists as it has been taken by events.

[9] It was further contended that there is nothing to be appealed in this appeal. The correct remedy for the appellants/plaintiffs was to amend the order before filing their appeal. Alternatively, since they insisted on the amending the order at this very late stage, they should have filed an appeal against the amended order dated 6 October 2015.

Ruling

[10] Having heard the issue raised, this court does not agree with the defendants. The judgment after the full trial was delivered on the 19 March 2015. As far as the Sessions Court is concerned the court is *functious officio* after the judgment was made. The order dated 2 April 2015 was made upon the application of the defendants in encl. 76A dated 31 March 2015. It is a separate application made under O. 92 r. 4 of the Rules of Court 2012 and/or the inherent jurisdiction of the court. The application is supported by the affidavit of Lachman Lalchand, counsel in charge of this case affirmed on 25 March 2015. The plaintiffs' counsel Sumathi Chandra objected to the said applicaton by filing her affidavit which she affirmed on 30 March 2015. Enclosure 76A was heard *inter partes* on 2 April 2015 and by the said order, the Sessions Court allowed prayer 3 of the said enclosure. Therefore, there is a separate order dated 2 April 2014 filed herein and approved by the Registrar of the Sessions Court. Hence the order is an order which can stand alone. The said order was subsequently amended on 6 October 2015, however the amendmen to include the words "prayer alternative 3" in my opinion does not violate the order already made by the Sessions Court Judge on 2 April 2015. The amendmen is superfluous, without the words "prayer alternative 3", the order dated 2 April 2015 can still stand. The order can be clearly understood that it refers to prayer 3 of encl. 76A which enclosure is also mentioned in the body of the said order.

[11] Accordingly, the order appealed against in this appeal still exists. Be that as it may the amended order is before this court found in Rekod Rayuan Tambahan Plaintiff (II). This court proceeds to hear this appeal.

This Appeal

[12] In this appeal, two issues were raised by the plaintiffs' counsel for this court to set aside the Sessions Court order:

(i) that the learned trial Sessions Court Judge has no jurisdiction to make the order; and

(ii) that the learned trial Sessions Court Judge had placed the money awarded for nursing care with Amanah Raya Berhad not until the hearing of the appeal by the High court but for an indefinite period.

Defendants' encl. 76A

[13] First and foremost I shall deal with the defendants' application in encl. 76A. On the face of encl. 76A, it is an application for stay if one were to read the express words in prayer 1 "penggantungan perlaksanaan diberi terhadap penghakiman bertarikh 19 Mac 2015". It further states in the affidavit of Lachman Lalchand (p. 5 RR) that:

(2) Pada 19.3.2015 pada pukul 3.30 pm, Mahkamah yang Mulia ini telah memberikan penghakiman kepada Plaintif-Plaintif bersertakan sejumlah kuantum untuk ganti rugi am dan khas yang ditetapkan;

(3) Arahan saya adalah untuk merayu terhadap keputusan tersebut. Sesalinan Notis Rayuan dikepilkan bersama sebagai ekshibit LL-1;

(4) Arahan selanjutnya adalah untuk membuat satu permohonan penggantungan perlaksanaan atas terma-terma yang diarahkan oleh Mahkamah yang Mulia ini.

[14] In fact the reasons stated in Lachman Lalchand's affidavit (p. 6 RR) states that:

(5) Jika Defendan dipaksa membayar jumlah penghakiman yang melebihi jumlah RM2,000,000 (tanpa faedah) kepada Plaintif, terdapat kemungkinan bahawa Defendan akan mengalami kesukaran ataupun menjadi mustahil menuntut kembali wang tersebut, jika Defendan berjaya dalam Rayuan kelak;

(6) Jika Defendan tidak dapat menerima kembali jumlah Penghakiman daripada Plaintif setelah berjaya dalam rayuan kelak, ini akan menjadikan Rayuan Defendan kepada Mahkamah Tinggi sebagai sia-sia ("nugatory").

Saya sesungguhnya percaya bahawa perkara ini merupakan suatu keadaan istimewa ("special circumstances") di segi undang-undang mengambil kira keterangan SP3, SP6 dan SP8 yang menunjukkan kedudukan kewangan mereka;

(7) Tambahan pula, Defendan-Defendan mempunyai satu rayuan yang bermerit dari segi undang-undang dan fakta;

(8) Walaupun Mahkamah yang Mulia ini telah membuat penghakiman, kes ini masih dalam siasatan pihak polis. Sesalinan report polis dan surat polis dilampirkan dan ditandakan sebagai LL2;

(9) Dengan demikian adalah arahan saya bahawa jumlah penghakiman haruslah diletakkan dalam akaun pelanggan peguam cara Plaintif sementara menunggu keputusan rayuan pihak Defendan;

(10) Tambahan pula prosedur ini juga selaras dengan Pekeliling Pendaftar bertarikh 2.1.2013, terutama sekali di perenggan 5(d).

[15] The plaintiffs' counsel contended that at the hearing of the application learned defence counsel raised the issues that if the money is released to the plaintiffs there is no likelihood of getting it back. This was the only issue they relied on as the reason for the money to be placed with the Amanah Raya Bhd.

[16] The plaintiffs' counsel submitted that the issues raised is no ground for the court to allow the application as there are absolutely no special circumstances. Counsel referred to *TAC Construction & Trading v. Bennes Engeneering Bhd (No. 2)* [1999] 2 CLJ 518 and *Ban Lee Sdn Bhd v. Renganathan Narayanan* [1998] 3 CLJ Supp 425.

[17] I am absolutely agree with the principle that there is no proposition of law that pending an appeal, a defendant is permitted to refuse to pay a plaintiff monies under the judgment sum by reason of the failure of the plaintiff to prove its solvency as held by the higher courts. The plaintiffs should not be deprived of the fruits of their litigation for the reason that the defendants were unhappy with the decision of the Sessions Court. The difficulty in the recovery of the amount of money is not a special circumstance to justify a stay of execution on the nugatory principle. By granting the application for stay, more hardship and injustice would be caused to the plaintiffs.

[18] It was submitted by plaintiffs' counsel that as there was no special circumstances before the court the learned Sessions Court Judge had no alternative but to dismiss the application. I agree with the plaintiffs' counsel.

[19] Be that as it may, having dealt with encl. 76A, did the Sessions Court Judge in the first place made an order granting a stay of execution of the judgment pending appeal to the High Court to the defendants? The amended order at para. 3 reads as follows:

> MAKA ADALAH PADA HARI INI DIPERINTAHKAN bahawa Permohonan Defendan-Defendan di Lampiran 76A dibenarkan di prayer alternatif 3 bahawa penghakiman bertarikh 19hb Mac 2015 untuk penjagaan iaitu "nursing care" dibayar atas nama Plaintif Kedua dan ditadbir oleh Amanah Raya Berhad untuk kos penjagaan Plaintif Kedua di Columbia Asia Extended Care Hospital. Kos ditanggung oleh Defendan-Defendan.

[20] Clearly to me the order never mentioned a stay of judgment pending appeal is granted to the defendants. It is only an order that the judgment sum for nursing care be paid in the name of the second plaintiff and administered by Amanah Raya Berhad for the second plaintiff at Columbia Asia Extended Hospital. This order was granted in respect of prayer 3 of the defendants' application in encl. 76A.

[21] The plaintiffs' counsel argued that by having an order to that effect, it is a stay order ie, monies not to be paid to the plaintiffs but to be deposited with the Amanah Raya Berhad. In other words the plaintiffs should not be

deprived of the fruits of their litigation and the monies should be paid to the plaintiffs. My view is that, the order clearly confines to the judgment sum for nursing care be paid in the name of the second plaintiff at Columbia Asia Extended Hospital. It simply means that the RM1,863,056 be paid to Amanah Raya Berhad who will administer the monies for purposes of paying the costs of treatment of the second plaintiff at Columbia Asia Extended Hospital.

[22] Prayer 3 of encl. 76A states as follow:

> (3) Lagi atau dalam alternatif, jumlah penghakiman yang dibenarkan oleh Mahkamah Yang Mulia ini untuk kos penjagaan diletakkan atas nama Plaintif Kedua dan ditadbir oleh Amanah Raya Berhad untuk penjagaan di Columbia Asia Extended Care Hospital.

[23] My reading of prayer 3 above, this is an alternative prayer for the court to consider in the event prayer 1 (stay of execution) and prayer 2 (monies placed in the plaintiffs' solicitor clients' account pending appeal) is not allowed. In other words if stay is not granted the defendants' counsel wanted the court to make an order in respect of judgment sum for nursing care to be paid in the name of the second plaintiff at Columbia Asia Extended Hospital.

[24] In view of the abovestated reasons, I am of the opinion that prayer 3 in fact is a separate or an independent prayer when granted does not operate as a stay of execution.

[25] Further, it is consistent with Lachman Lalchand's affidavit at para. 11 (p. 6 of RR) which says that:

> (11) Secara alternatifnya sekiranya Mahkamah yang Mulia ini tidak sehaluan dengan cadangan di atas, arahan saya adalah untuk memohon untuk satu perintah di mana jumlah penghakiman yang dibenarkan oleh mahkamah yang Mulia ini untuk kos penjagaan diletakkan atas nama Plaintif Kedua dan ditadbir oleh Amanah Raya Berhad untuk penjagaan di Columbia Asia Extended Care Hospital.

[26] Having heard parties submissions in encl. 76A and by granting the only order in prayer 3, clearly the Sessions Court Judge was not in agreement with the defendants' counsel suggestion (tidak sehaluan dengan cadangan di atas) for prayer 1 and 2.

Whether The Order Was Lawful Or A Nullity

[27] The plaintiffs have filed written submissions. In the first submission the plaintiffs' counsel was mainly focussing on the issue of non-existence of special circumstances in an application for stay of execution in encl. 76A. The second submission, the plaintiffs' counsel raised the issue that s. 11 of the Public Trust Corporation Act 1995 only gives the power to the High Court to make such order and not to the Sessions Court. Thus, the main issue is whether the order of the Sessions Judge is lawful or a nullity.

Non-Existence Of Special Circumstances

[28] This becomes an issue when learned defence counsel raised the issue if the money is released to the plaintiffs there is no likelihood of getting it back. It was also contended that this was the only issue the defendants relied on as the reason for the monies to be placed with the Amanah Raya Bhd. In my view notwithstanding what has been submitted by the defendants' counsel, the fact is, the Sessions Court has granted the order not merely placing the monies with Amanah Raya Bhd but with a clear order that the costs of nursing care to be paid in the name of the second plaintiff at Columbia Asia Extended Hospital ("kos penjagaan diletakkan atas nama plaintif kedua dan ditadbir oleh Amanah Raya Berhad untuk penjagaan di Columbia Asia Extended Care Hospital").

[29] I agree with the plaintiffs' counsel's submission on law that in an application for stay of execution, the defendants must show special circumstances. The cases of *Ming Ann Holdings Sdn Bhd v. Danaharta Urus Sdn Bhd* [2002] 3 CLJ 380 and *Ban Lee Sdn Bhd v. Renganathan Narayanan* [1998] 3 CLJ Supp 425 referred to in the submission is the correct law to follow.

[30] In this case, there was no order granted for the stay of execution pending defendants' appeal made by the Sessions Judge. Therefore, the issue whether there are special circumstances for the defendants to prove in their application for stay does not arise. The Sessions Court Judge was right is refusing to grant prayers 1 and 2 of encl. 76A to the defendants. Hence the plaintiffs' contention that the Sessions Court Judge was wrong in exercising her discretion in granting the order for stay of execution to the defendants is a non-starter and without lawful basis.

[31] Coming back to the order of the Sessions Court Judge in granting the order in prayer 3 of encl. 76A, it was given after the Sessions Court Judge has heard submissions from both parties. It was submitted by the defendants that the portion of the sum relating to nursing care of RM1,800,000 was to allow the plaintiffs to be cared at Columbia Asia Extended Hospital. In fact it was the plaintiffs' point of view that "this is the best interests of the second plaintiff as he needs medical and nursing care all the time". It was further stated that "home care is not what the parents want as they are also catching up in age and the mother is sickly". This is supported by specialist report which has stated in no uncertain terms that the second plaintiff need to be put into an institution so that his life expectancy is not affected and explained that the doctor from Columbia Asia Extended Hospital left the decision to the parents as he did not want to be seen as touting patients for his care centre.

[32] I agree with the defendants' counsel that it is the sum of money for nursing care of RM1,800,000 is meant by the court and accepted by the plaintiffs as being for the sole purpose of caring for the second plaintiff at Columbia Asia Extended Hospital. Therefore, there can be no logical reason for the mother to object to the order.

[33] The plaintiffs' counsel seems to be distracted by the defendants' counsel's reference to para. 5(d) of the Registrar's circular which says that the Sessions Court Judge or Magistrate may issue a direction to the insurance company to pay the damages into the solicitor's account as stakeholder while waiting for the outcome of the appeal. The plaintiffs' counsel counter argued that the plaintiffs should not be deprived of their judgment money and the defendant being such a big commercial company should not be playing bullying tactics against the plaintiffs (see *Asean Security Paper Mills Sdn Bhd lwn. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 2 CLJ 349 and *Wong Uong Kee v. RHB Insurance Bhd* [2009] 9 CLJ 859). It was submitted that this court could not justify any reasonable grounds for allowing a stay in the recovery proceeding, when the rights and health of a person was at stake, and when the victim of an accident case was suffering due to serious financial constraints.

[34] Further, the plaintiffs' counsel submitted that in a Court of Appeal case where he was acting for the plaintiffs/appellants, YAA Raus Shariff has stated that the court has no right to impose conditions on the judgment. It is for the second plaintiff to decide when he wants to use the prosthesis. While I may agree with plaintiffs' counsel on this point, however, in this particular case, the injury to the second plaintiff is unique and specific which requires him to be cared at Columbia Asia Extended Hospital. The circumstances of the second plaintiff's injury rendered him to be put into an institution so that his life expectancy is not affected. This is in line with the plaintiffs' family's wish for the second plaintiff to be admitted into Columbia Asia Extended Hospital.

[35] Be that as it may, when it was also the concern of the Sessions Court Judge that the judgment sum for nursing care be paid in the name of the second plaintiff and administered by Amanah Raya Berhad for the second plaintiff at Columbia Asia Extended Hospital, I strongly believe that at the time this encl. 76A was heard, there must be a letter of consent obtained by the defendants that Amanah Raya Berhad is able to do what they have suggested to pay to Amanah Raya Berhad. It is not disputed that Amanah Raya Berhad is a company. The letter of consent to take on the task should have been obtained and tendered in by way of affidavit evidence by the company. Clearly there is no evidence or even the slightest indication that Amanah Raya Berhad are prepared to take on this task. Further, there was also no letter from Amanah Raya Berhad that they undertake, once the monies are deposited in their bank account they will pay the monthly bills to Columbia Asia Extended Hospital.

[36] Further as submitted by the plaintiffs' counsel, the learned Sessions Court Judge did not consider that Amanah Raya Berhad charges 1% to 2% of the total deposit as their fees. If it is RM1,800,000 at 2% the plaintiffs have lost RM36,000 from the word go. The interest paid is also negligible

compared to commercial bank interest. The plaintiffs have lost by depositing the money with the Amanah Raya Berhad and this court was told that until now, the second plaintiff has not been admitted into Columbia Asia Extended Hospital as there is no undertaking by Amanah Raya to pay the costs to the hospital. It is my considered opinion that Amanah Raya Berhad is no diferent from other registered companies or other financial institution like commercial banks. In view of the abovesaid, the money can also be deposited into the commercial banks. The Sessions Court Judge failed to give any explanation on the order made except by saying that "menjadi tanggungjawab dan tugas mahkamah untuk memastikan wang penghakiman digunakan bagi tujuan yang diberi". I agree with the plaintiffs' counsel's submission that if she was so concerned with the use of money could have ordered the money be kept in a commercial bank with standing instructions for the costs of nursing care to be paid to Columbia Asia Extended Hospital. Provided there was consent that the bank is ready to do what is to be ordered.

[37] The defendants clearly failed to furnish any evidence that Amanah Raya Berhad has consented to take on the task as suggested in prayer 3 of encl. 76A, therefore, I am of the considered view that the learned Sessions Court Judge had absolutely no right in law to direct the monies to be paid to Amanah Raya Berhad. It cannot make an order against or for a party not a party to the suit unless that party has consented to be bound by the direction of the court. In view of this it is my considered opinion that the learned Sessions Judge's decision in granting the order in prayer 3 of encl. 76A is unlawful, and must be set aside on the law.

[38] It cannot be denied that the second plaintiff needs to be put into an institution which can take care of him. It cannot be denied either that it is the plaintiffs' family wish for the second plaintiff to be admitted into Columbia Asia Extended Hospital. Assuming the second plaintiff is unable to get admitted in the said hospital for reasons best known to the hospital, the plaintiffs' family can still hire qualified nurses to work on different shifts or hours and at certain rate of payment to carry out nursing care to the second plaintiff. In this aspect I must agree with the plaintiffs' counsel's contention that if for any reason the said hospital cannot take the second plaintiff into its hospital the second plaintiff is entitled to use the money not only for hiring qualified nurses but to spend the money on his food, clothings, pampers, medication, etc which will exclude the cost at hospital.

[39] In view of the reasons stated above, it is my considered opinion that it does not matter whether in Columbia Asia Extended Hospital or at home, the second plaintiff has his care as long as the money is used for purpose for which it is awarded and the amount used is about the same. In the absence of evidence that the plaintiffs will use the money elsewhere the decision of the learned Sessions Court Judge cannot stand. Therefore, there is no reason to allow the defendants to deprive the plaintiffs of the money.

Section 11 Of The Public Trust Corporation Act 1995

[40] When it was also the concern of the Sessions Court Judge that the judgment sum for nursing care be paid in the name of the second plaintiff and administered by Amanah Raya Berhad for the second plaintiff at Columbia Asia Extended Hospital, before the order was made, she must make sure whether she has the power or jurisdiction under the relevant Act to make such order.

[41] I find the Sessions Court Judge has no jurisdiction to make such order under s. 11 of the Public Trust Corporation Act 1995.

[42] Section 11 of the Act reads as follows:

> 11.(1) If a court, the Government of Malaysia or a person within or outside Malaysia has power to appoint a trustee, executor, administrator, guardian, next friend, agent, attorney, receiver and manager or liquidator or make any other appointment of a fiduciary nature, the Corporation may be so appointed.
>
> (2) The Corporation may act either alone or jointly with any person or body of persons in any capacity to which it may be appointed and shall have the same powers, duties and liabilities and be entitled to the same rights and immunities and be subject to the same control and orders of the court as person acting in that capacity.
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> (3) The Corporation shall not decline to accept any appointment on the ground only of the small value of the property to which the appointment relates.
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> (4) Any person aggrieved by the decision of the Corporation to decline to accept any appointment may, within fourteen days of the decision, appeal to the Minister in writing and the decision of the Minister on such appeal shall be final.

[43] The plaintiffs' submission merits consideration because the power of appointment of trustee executor, administrator, guardian, next friend, agent, attorney, receiver and manager or liquidator is only given to the High Court. In this case, the appointment of Amanah Raya Berhad as administrator should have been made by the High Court instead of the Sessions Court.

[44] Section 2 of the Act defines the word 'court' to mean the High Court or a judge of such court and includes the Registrar, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars of the High Courts. Nowhere in s. 2 the word appearing as Sessions Court of a judge of Sessions Court.

[45] Therefore, it is very clear that the Sessions Court has overstepped its jurisdiction in allowing the money to be deposited in the name of the plaintiff to be administered by the Amanah Raya Berhad. For courts to deal with such matters, it must have jurisdiction to do so. The courts have no general inherent jurisdiction to grant the order it did beyond jurisdiction given by particular statute.

[46] Section 11 of the Act has only given the High Court the power and as such the Sessions Court lacks such power or jurisdiction therefore its order must be set aside.

[47] I have considered the defendants' counsel's submission that under O. 76 r. 12 of the Rules of Court 2012, the court may gives the general or special directions as to how the money is to be applied or dealt with by the court where the money is paid to, or for the benefit of a person under disability.

[48] It is noted that O. 76 r. 1 of the Rules of Court 2012 defines "Person under disability" as a person who is a minor or a patient. It is not disputed that the second plaintiff is a minor suing the defendants by his litigation representative ie, his mother, the third plaintiff in this case. On the face of r. 12, the Sessions Court has the discretion to give the directions as to the manner the money to be applied or dealt with by the court.

[49] However, O. 12 r. 2 qualifies that the directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into court and invested or otherwise dealt with. It is not disputed the money can be paid into court. In this instant case the direction of the Sessions Court Judge is for the money to be deposited in the name of the second plaintiff to be administered by the Amanah Raya Berhad. If the direction falls under the second limb 'or otherwise dealt with' then, in my considered opinion, for Sessions Court to deal with such matters, ie, directing Amanah Raya Berhad to administer the money, it must have jurisdiction to do so. By such direction, the Sessions Court in my opinion, has indirectly appointing Amanah Raya Berhad as trustee, executor, administrator of the second plaintiff's money to which only the High Court Judge has the power to make such appointment under s. 11 of the Public Trust Corporation Act 1995.

[50] Therefore, the Sessions Judge has no general inherent jurisdiction to grant the order it did beyond jurisdiction given by a particular statute.

[51] I am mindful that the lower courts have been making such order but the fact that such orders are being made do not convert an illegal judicial order into a legal judicial order.

[52] The order of the Sessions Judge given on 2 April 2015 and the amended order dated 6 October 2015 is set aside with costs of RM3,000.